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No. 92-2058

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

Hawaiian Airlines, Inc., et al.,

Petitioners,

v.

Grant T. Norris,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF HAWAII

BRIEF OF AIR TRANSPORT ASSOCIATION OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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Brief of
Air Transport Association of America As Amicus Curiae In Support of Petitioners

INTEREST OF THE AMICUS CURIAE

The Air Transport Association of America ("ATA"), is a non-profit unincorporated trade association of United States federally certificated air carriers. ATA was founded in 1936 to facilitate the exchange of ideas and information concerning matters that affect the airline industry, and to represent the member carriers in legislative, judicial and administrative matters.[1] ATA has filed numerous *amicus*

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1 The operator members include Alaska Airlines, Aloha Airlines, American Airlines, American Trans Air, Continental Airlines, Delta Air Lines, DHL Airways, Evergreen International, Federal Express Corp., (continued...)

briefs in federal and state court proceedings concerning a broad variety of issues of concern to its members. ATA also works closely with the various Federal agencies that regulate the airline industry, such as the Federal Aviation Administration and the U.S. Department of Transportation. ATA's members account for more than 97% of the domestic passenger and cargo traffic flown annually by U.S. air carriers, transporting 475 million passengers over 485 billion miles in 1993. ATA's members employ over 535,000 people, the majority of whom are subject to the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq*.

Congress recognized the important role of air carriers in interstate commerce when it enacted the Federal Aviation Act and when, in 1936, it added air carriers to the coverage of the RLA. Congress recently reemphasized the economic importance of the airline industry to interstate commerce when it enacted legislation creating the National Commission to Ensure a Strong Competitive Airline Industry. Pub. L. No. 103-13, 107 Stat. 43 (1990).

All air carrier members of ATA are subject to the RLA and are significantly affected by state and federal court decisions, such as the one below, that undermine the RLA's comprehensive procedures for resolution of employment disputes. These RLA procedures are designed to facilitate the peaceful and expeditious resolution of such disputes and to avoid interruptions to vital interstate commerce. These procedures will be eroded if state and federal courts, like the Hawaii Supreme Court in this case, allow state law causes of action that overlap RLA grievances to escape preemption by the RLA. Moreover, in the 1990's, when airline losses have

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1(...continued)
Hawaiian Airlines, Northwest Airlines, Reeve Aleutian Airways, Southwest Airlines, Trans World Airlines, United Air Lines, UPS Corp. and USAir. Associate members are Air Canada and Canadian Airlines International.

exceeded $11 billion, airlines are especially concerned with effective management of operations which cross many state lines. These operations cannot be administered efficiently when varied local laws and remedies affecting employment relationships are held to be permitted, rather than preempted by the RLA. Accordingly, the ATA files this brief as *amicus curiae* in support of the petitioners.[2]

STATEMENT OF THE CASE

The ATA adopts the Statement of the Case set forth by Petitioners. Briefly, Respondent Grant T. Norris, a mechanic employed by Petitioner Hawaiian Airlines, Inc., performed work on a tire assembly that he believed to be unsafe. His supervisor asked him to sign off on the work under the terms of the collective bargaining agreement that stated: "An airline mechanic may be required to sign work records in connection with the work he performs." Norris refused, and was suspended pending an investigation of the question whether Hawaiian Airlines had just cause to terminate him. The mechanics' collective bargaining agreement, Article XVII ¶ F, provided that "[a]n employee's refusal to perform work which is in violation of established health and safety rules, or any local, state or federal health and safety law shall not warrant disciplinary action." The agreement also provided a multi-level grievance and arbitration procedure culminating with a decision by a System Board of Adjustment, as required by the Railway Labor Act, 45 U.S.C. § 184.

After the grievance procedure was initiated, Norris reported to the Federal Aviation Administration ("FAA") that the tire assembly was unsafe, and the FAA inspected the tire assembly and had it removed from the aircraft. Norris proceeded through the first stage of the grievance process,

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2 This brief is filed with the written consent of all parties pursuant to Supreme Court Rule 37.3.

where his discipline was reduced to a six-week suspension. Norris then abandoned the grievance and arbitration procedure, and filed suit in state court against Hawaiian Airlines and a number of supervisors alleging, *inter alia*, that his discharge violated the public policies reflected in the Federal Aviation Act and the Hawaii Whistleblower's Protection Act. Norris' claims are common law claims; his Complaint is not premised upon any alleged statutory violation.

The First Circuit Court of Hawaii held that the claims were preempted by the Railway Labor Act. The Hawaii Supreme Court reversed, based on the preemption test set forth in *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988) (hereinafter "*Lingle*"), a case interpreting section 301 of the Labor Management Relations Act ("LMRA") rather than the Railway Labor Act.

SUMMARY OF ARGUMENT

This case presents the question whether the Railway Labor Act preempts respondent's state law wrongful discharge claims. The Hawaiian Supreme Court below found no RLA preemption, expressly relying upon this Court's decision in *Lingle*, a case which arose under the very different statutory scheme of the LMRA. In resolving this issue, the Court will decide whether to follow or limit its decision in *Andrews v Louisville & N. Ry. Co.*, 406 U.S. 320 (1972) (hereinafter "*Andrews*"), which held that a wrongful discharge claim premised on violation of contract terms was preempted by the RLA's mandatory and exclusive Adjustment Board processes.

Andrews should be followed in this case, for -- unlike the LMRA, where arbitration is voluntary -- the language, legislative history, and policy of the RLA all indicate a clear Congressional intent that discipline and discharge claims by employees of RLA carriers must be presented to Adjustment Boards, not to state courts, whether

or not these claims are presented as or are intertwined with contract interpretation issues.

The RLA repeatedly and explicitly commands that discipline and discharge grievances go to Adjustment Boards, whether or not the dispute is contract-based. For example, RLA Section 2 calls for "prompt and orderly settlement of *all disputes* growing out of *grievances or* out of the interpretation or application of agreements . . ." 45 U.S.C. § 151a (emphasis added). This plain legislative command concerning the mandatory and exclusive Adjustment Board dispute resolution processes is reinforced by the legislative history, which demonstrates that the language was intentionally chosen by Congress to include disciplinary matters and that Congress rejected efforts to add less preemptive provisions to the statute.

Broad preemption of state wrongful discharge claims by the RLA's Adjustment Board processes is fully supported by this Court's prior constructions of the RLA, and by the structure and purposes of the statute. The Court has long held that these processes encompass not only contract disputes, but "all other incidents of that [employer-employee] relation," *Elgin, J. & E. Ry. v. Burley*, 325 U.S. 711, 733-34 (1945), and it has repeatedly rejected efforts by carriers, unions, and employees alike to circumvent Adjustment Boards in favor of judicial forums. This Court has recognized in its decisions several critical aspects of the RLA statutory scheme Congress created that compel a preemptive effect over state wrongful discharge claims: nationwide uniformity in dispute resolution processes involving interstate carriers; substantial benefits to carriers, unions, and employees of Adjustment Board processes; and Adjustment Board expertise concerning industry-specific issues, including reconciliation of safety and work performance concerns.

In light of this plain statutory language and clear evidence of Congressional purpose, the Court should reject

the flawed analytical framework for resolving this case used by the Supreme Court of Hawaii and supported by the Solicitor General. It is spurious, and destructive of the RLA's dispute-resolution processes, to suggest that the Court's decision in *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n*, 491 U.S. 299 (1989) (hereinafter "*Conrail*"), supports a different result. The Court should not be misled into applying authority dealing with *which* of two RLA dispute resolution processes are appropriate (those for "major" versus "minor" disputes) to create a third type of employer-employee dispute addressed by *neither* of these processes. Discipline and discharge cases clearly give rise to minor disputes reserved for mandatory arbitration under the RLA.

ARGUMENT

I. THE RAILWAY LABOR ACT'S MANDATORY ADJUSTMENT BOARD PROCESSES PREEMPT RESPONDENT'S STATE WRONGFUL DISCHARGE CLAIM.

The extent to which a federal statute preempts state law is determined by the extent to which Congress chose to exercise its authority to cause such preemption; such preemption is purely a matter of statutory construction. *Gade v. National Solid Wastes Management Association*, 112 S.Ct. 2374, 2383 (1992) ("nonapproved state regulation of occupational safety and health issues for which a federal standard is in effect is impliedly pre-empted as in conflict with the full purposes and objectives of the OSH Act"). Thus, this Court has held that some federal labor laws broadly preempt state laws beneficial to employees, but that other federal labor laws do not preempt state provisions protecting employees. *Compare Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981) (ERISA broadly preempts state workers' compensation law) *with California Federal Savings & Loan*

Assn. v. Guerra, 479 U.S. 272 (1987) (Title VII does not preempt state protection of pregnant women).

As this Court has repeatedly observed, the RLA was intended by Congress to displace much state law that might otherwise apply to employees in the railroad and airline industries.[3] Indeed, in *Andrews*, this Court held an employee's wrongful discharge claim premised on violation of contract terms was preempted by the RLA because the employee's exclusive remedy was before the RLA Adjustment Board. The *Andrews* Court noted that "the notion that the grievance and arbitration procedures provided for minor disputes in the Railway Labor Act are optional, to be availed of as the employee or the carrier chooses, was never good history and is no longer good law." 406 U.S. at 322.

Respondent's position would require that this Court restrict *Andrews* to its facts. As will be seen below, such a restriction would be untenable, for the RLA's language, legislative history, and policy require preemption of all state wrongful discharge actions. Arbitration before an Adjustment

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3 *See, e.g., Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 381 (1969), *reh'g denied*, 394 U.S. 1024 (1969) (state law restricting self help is preempted: "interference would be compounded if the disputants were--as they frequently would be--subjected to various and divergent state laws."); *Union Pacific R.R. v. Price*, 360 U.S. 601, 617 (1959) ("To say that the discharged employee may litigate the validity of his discharge in a common-law action for damages after failing to sustain his grievance before the Board is to say that Congress planned that the Board should function only to render advisory opinions, . . . 'with the consequence that the parties are entirely free to accept or ignore the Board's decision . . . [a contention] inconsistent with the Act's terms, purposes and legislative history.'"); *California v. Taylor*, 353 U.S. 553, 559, 566 (1957) (RLA's "policy of protecting collective bargaining comes into conflict with the rule of California law that state employees have no right to bargain collectively * * * [T]he Railway Labor Act is 'all-embracing in scope and national in its purpose, which is as capable of being obstructed by state as by individual action.'")

Board provides the sole forum in which a covered employee may challenge a discharge, regardless of whether the dispute involves contract interpretation issues. To be sure, both the arbitration forum and the "just cause" standard generally applicable to Adjustment Board determinations will be more or less desirable to a covered employee depending on the state law that might otherwise apply absent RLA processes. However, dilution or abandonment of the RLA Adjustment Board process for resolving such employee disputes is for Congress, not this Court, to address.

A. Preemption Is Mandated By The Plain Language Of The RLA.

The RLA contains uniquely broad language addressing settlement of employment disputes. No fewer than six times, Congress explicitly has decreed that RLA dispute resolution processes not be limited to contract interpretation issues, but encompass all employee disputes with RLA-covered employers. The RLA general purpose clause, Section 2, states that the statute is "to provide for the prompt and orderly settlement of *all disputes* growing *out of grievances or out of* the interpretation or application of agreements covering rates of pay, rules, or working conditions." 45 U.S.C. § 151a (emphasis added). Section 2, First requires carriers and their employees to "settle *all* disputes, whether arising out of the application of such [collective bargaining] agreements *or otherwise*." 45 U.S.C. § 152, First (emphasis added). Section 3, First (i) establishes Adjustment Boards for "[t]he disputes between an employee or group of employees and a carrier or carriers growing *out of grievances or out of* the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . ." 45 U.S.C. § 153,

First (i) (emphasis added).[4] Congress' use in these statutory phrases of the disjunctive "or" (along with its repetition of the words "out of" in 45 U.S.C. § 151a and 153, and use of the word "otherwise" in 45 U.S.C. § 152, First) combined with its repeated reference to "all disputes," makes this broad legislative intent clear. *Accord* 45 U.S.C. § 152, Sixth ("dispute . . . arising *out of grievances or out of* the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . .").

Two equally broad provisions were added in 1936, when the RLA was amended to establish Adjustment Boards for the airline industry.[5] Rather than narrow Adjustment Board authority over employee disputes in the airline industry, Congress used language identical to that adopted in 1926 to ensure that all employee disputes, not merely contract disputes, would be handled by Adjustment Boards. 45 U.S.C. § 184 ("disputes . . . growing *out of grievances, or out of the interpretation or application of agreements* concerning rates of pay, rules, or working conditions . . . may be referred . . . to an appropriate adjustment board . . ."); 45 U.S.C. § 185 (NMB may create National Air Transport Adjustment Board "in order to provide for the prompt and orderly settlement of disputes between said

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4 The error of the Hawaii Supreme Court is nowhere more striking than in its conclusion that "the *plain language* of § 153 First(i) does not support preemption of disputes independent of a labor agreement." *Norris v. Hawaiian Airlines*, 842 P.2d 634, 642 (Haw. 1992) (emphasis added).

5 Conversely, Congress has since 1926 passed and amended numerous statutes regulating labor relations in both the private and public sectors, *none* of which contains such a broad mandate for dispute resolution as the Adjustment Board system established by the RLA. For example, the Labor Management Relations Act creates no mandatory arbitration processes but rather establishes federal court jurisdiction in §301 over "suits for *violation of contracts* between an employer and a labor organization." 29 U.S.C. § 185(a)(emphasis added).

carriers by air . . . and . . . employees, growing *out of grievances, or out of the interpretation or application of agreements* . . . covering rates of pay, rules, or working conditions . . .. ").[6]

The plain language of the RLA thus demonstrates that exclusive Adjustment Board authority to resolve disputes explicitly extends beyond contract application disputes. Congress, by using the phrases "*all* disputes, growing *out of grievances or out of* the interpretation or application of [collective bargaining] agreements" and "*all* disputes, whether arising out of . . . agreements *or otherwise*," cannot be deemed to have sent only contract interpretation matters to the Adjustment Boards. RLA Adjustment Boards were to resolve *all* employee disputes, not merely contract disputes.

B. Preemption Is Supported By The Legislative History Of These Provisions Of The RLA.

Since the respondent's "wrongful discharge" claim is precisely the sort of dispute preempted by the language of

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6 The 1936 amendments extending the RLA to air carriers included provisions for system Boards of Adjustment even though there were no collective bargaining agreements yet in existence, thus showing that Congress intended Adjustment Boards to resolve "individual disputes" other than those arising out of application of an agreement:

> [T]here are no such [airline collective bargaining] contracts in operation now. . . .
>
> Section 3 of the original act permits the formation of regional boards to handle local disputes and the same option obtains as to air transportation. Thus by affording a permissive delay in the formation of the permanent board it was thought that temporary boards might be created under this power to *settle individual disputes* pending the time when the volume of disputes warranted the creation of a full-time board.

H.R. Rep. No. 2243, 74th Cong., 2d Sess., 1 (1936) (emphasis added).

the RLA, it is not essential to examine the RLA's legislative history. Nevertheless, that history reinforces that Congress intended to give Adjustment Boards exclusive authority over all employee disputes with their employers, whether or not such disputes arise out of interpretation of collective bargaining agreements. This history also demonstrates that wrongful discharge and discipline issues, in particular, were included among these preempted disputes.

In the 1926 debates concerning the RLA, Senator Watson, a proponent of the proposed legislation, clearly viewed grievances "of a personal nature," as well as disputes involving contract interpretation issues, to be within the purview of Adjustment Boards:

> [T]here are two classes of disputes that arise in connection with the operation of railroads. One class is what are ordinarily called grievances. They may be of a personal nature; they may involve a great many employees; they may involve a few employees; they may involve but one employee. Of this class, *also*, are disputes rising out of the interpretation and application of existing agreements as to wages, hours of labor, or working conditions.

67 Cong. Rec. 8807 (1926) (statement of Sen. Watson) (emphasis added).

Similarly, Representative Barkley, the RLA's sponsor, explained that Adjustment Boards were meant to resolve grievance and discipline matters going beyond contract interpretation issues:

> We provide that it shall be their duty to set up adjustment boards, not to consider questions of wages but disagreements over *grievances, interpretations, discipline, and other technicalities* that arise from time to time in the workshop and out on the tracks in the operation of the roads.

67 Cong. Rec. 4517 (1926) (statement of Rep. Barkley) (emphasis added).

Representative Crosser described the RLA dispute-resolution mechanisms in broad terms, unconstrained by the notion that an arbitrator's duties should be narrowly confined to interpreting collective bargaining agreement provisions, as follows:

> These boards serve in a manner as courts to determine who is right and who is wrong, what is just and what is unjust, in disputes between railroads and their employees.

67 Cong. Rec. 4665 (1926) (statement of Rep. Crosser). *See also* 67 Cong. Rec. 4670 (1926) (statement of Rep. Arentz) ("Minor disputes involve discipline, grievances, and disputes over the application and meaning of an agreement.")

Congress' intent to preempt state law is also supported by the fact that, in the only two instances when Congress explicitly considered deferral to state employee-protective laws, it chose not to defer. An amendment proposed while the RLA of 1926 was under consideration by Congress would have permitted operation of state arbitration laws as an alternative to the arbitration procedures set forth in

the RLA. The proposed amendment was rejected.[7] Later, in 1950, when Congress added dues checkoff and union security provisions to the RLA, it expressly declined to permit employees to "opt out" of compulsory union membership in deference to state right-to-work laws.[8]

Finally, Congress recognized that Adjustment Boards are the best forum for striking the proper balance between employee assertions of safety concerns and employer interests

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7 67 Cong. Rec. 4699-4710 (1926). In the 1926 debate regarding the preemptive effect of RLA § 7, providing for voluntary arbitration of major disputes about contract formation, a Kansas statute that compelled arbitration was extensively discussed. Representative Tincher from Kansas argued "[t]here is no . . . good reason for putting a provision in this bill . . . to enunciate the principle of being willing to abrogate State laws, where they attempt to force arbitration . . ." *Id.* at 4706. Representative Newton responded, "when Congress writes a law for voluntary arbitration it ought to protect that legislation by proper safeguards from permitting a State even to attempt to . . . impose a legal obligation to submit to compulsory arbitration." *Id.* at 4706.

8 As the House Committee Report emphasized:

> if . . . [union security] agreements are to be permitted in the railroad and airline industries it would be wholly impracticable and unworkable for the various States to regulate such agreements. Railroads and airlines are direct instrumentalities of interstate commerce; the Railway Labor Act requires collective bargaining on a system-wide basis; agreements are uniformly negotiated for an entire railroad system and regulate the rates of pay, rules of working conditions of employees in many States; the duties of many employees require the constant crossing of State lines; many seniority districts under labor agreements extend across State lines, and in the exercise of their seniority rights employees are frequently required to move from one State to another.

H.R. Rep. No. 2811, 81st Cong., 2d Sess., 5 (1950). The Senate rejected a proposed amendment offered by Senator Holland that would have prevented federal preemption of state right-to-work laws. 96 Cong. Rec. 16,376 (1950).

in production, including employer interests that alleged safety concerns not be improperly asserted to avoid performance of work duties.[9] The lower courts have acknowledged RLA coverage of such workplace safety disputes, and have not hesitated in sending them to Adjustment Boards, even when the collective bargaining agreements contain no express provisions on this subject.[10] Moreover, in adopting the 1980 Amendments to the Federal Railroad Safety Act, Congress explicitly recognized that Adjustment Boards are the proper

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9 Refusal to perform work for spurious safety reasons can be a form of job action in the airline and railroad industries. For example, in the following cases, such "safety" protests were enjoined. *Long Island R.R. v. System Federation No. 156*, 368 F.2d 50, 52 (2d Cir. 1966) (union "'blue-flagged' the trains, not for safety reasons, but to coerce the Railroad into bypassing System Federation and negotiating with the Brotherhood alone as representative of the carmen."); *Missouri-Kansas-Texas R.R. v. Brotherhood of R. Trainmen*, 342 F.2d 298, 300 (5th Cir. 1965); *Texas International Airlines, Inc. v. Air Line Pilots Ass'n*, 518 F. Supp. 203, 207 (S.D. Tex. 1981) (pilots enjoined from delaying and disrupting operations via "report[ing] equipment outages or malfunctions"); *Long Island R.R. v. Brotherhood of Locomotive Engineers*, 290 F.Supp. 100 (E.D.N.Y. 1968) (union's rationale for refusing to perform trips in and out of Penn Station due to safety concerns is "spurious").

10 *See Independent Union of Flight Attendants v. Pan American World Airways, Inc.*, 789 F.2d 139 (2d Cir. 1986) (discipline of flight attendant who informed FAA that Pan Am violated flight and duty time rules presents a minor dispute for Adjustment Board); *Trainmen*, 342 F.2d at 300 (safety dispute is for Adjustment Board despite the silence of the labor contract as to any terms governing unsafe working conditions; "the common law duty . . . to use reasonable care in furnishing its employees with a safe place to work is clear. . .. If . . . plaintiff has failed to perform that duty its employees are required by the Railway Labor Act to submit their grievances in that regard to the NRAB . . ."); *Springfield Terminal v. United Transp. Union*, 675 F. Supp. 683 (D. Me. 1987); 767 F. Supp. 333, 340 (D. Me. 1991) (safety protest issues fall "precisely within the arbitration board's range of expertise," *quoting United Paperworkers v. Misco*, 484 U.S. 29, 45 n.11 (1987) ("The issue of safety in the workplace is a commonplace issue for arbitrators to consider in discharge cases."))

forum for such questions. In Section 10, 45 U.S.C. § 441, Congress adopted whistleblower protection for employees who reported safety concerns or who refused to work in unsafe conditions. Congress also wrote certain standards into the Act, however, to ensure that safety protests did not encroach upon the legitimate concern of management with running the business.[11] Congress recognized that it is the RLA Adjustment Boards that must resolve any differences in accommodating these interests.[12] Adjustment Boards are

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11 The refusal to work is protected only if it "is made in good faith and no reasonable alternative to such refusal is available . . . the hazardous conditions is of such a nature that a reasonable person . . . would conclude that . . . the condition presents an imminent danger . . . there is insufficient time . . . to eliminate the danger through resort to regular statutory channels . . .[and] the employee . . . has notified his employer of . . . his intention not to perform further work . . ." 45 U.S.C. § 441(b).

12 "[U]nder current laws railroad employees . . . can seek similar protection through normal grievance procedures established under section 3 of the [RLA]. This subsection is intended to codify the protection granted . . . by the law boards and panels. It is important to note in this regard that any grievance under this section is subject to the procedures set forth in section 3 of the [RLA]." 126 Cong. Rec. 27,056 (1980) (remarks of Sen. Cannon); "Under this provision, an employee who was fired or felt he was discriminated against could file a grievance through the existing Railway Labor Act grievance machinery. The grievance board could order the employee reinstated, and under already existing practice, award back pay." 126 Cong. Rec. 26,531 (1980) (remarks of Rep. Florio). *Accord*, H.R. Rep. No. 1025, 96th Cong. 2d Sess. (1980), 1980 U.S. Code Cong. & Ad. News at 3840-41. *See also Rayner v. Smirl*, 873 F.2d 60 (4th Cir. 1989), *cert. denied*, 493 U.S. 876 (1989) (section 441 and the "comprehensive remedial provisions" of the RLA incorporated therein are the railroad employee's exclusive remedy and therefore state law claims for wrongful discharge are preempted); *Boston & Maine Corp. v. Lenfest*, 799 F.2d 795 (1st Cir. 1986), *cert. denied*, 479 U.S. 1102 (1987) (enjoining spurious safety protest); *Alaska Airlines, Inc. and Air Line Pilots Ass'n*, 88 AAR (Lab. Rel. Press) 0108 (1988) (Sinicropi, Arb.) (Adjustment Board mitigates discipline of pilot who refused to fly aircraft on grounds that defect in windshield rendered it nonairworthy.)

uniquely qualified to resolve the precise issues presented in respondent's case -- that is, the balancing of the employer's interest in requiring work to be performed with the individual employee's and public concern that safety problems be reported.

C. Preemption Is Consistent With This Court's Decisions And The RLA's Purposes.

In *Andrews*, this Court overruled its earlier decision in *Moore v. Illinois Central R.R.*, 312 U.S. 630 (1941), which had permitted employees to circumvent RLA Adjustment Board processes by bringing "wrongful discharge" actions in state court. The *Andrews* Court viewed the RLA grievance process to be an exclusive remedy, "rather than merely requiring exhaustion of remedies in one forum before resorting to another." 406 U.S. at 325. Accordingly, the Court held that "The fact that petitioner characterizes his claim as one for 'wrongful discharge' does not save it from the Act's mandatory provisions for the processing of grievances." *Id.* at 323-24.

1. This Court's Prior Constructions Of The RLA Support Broad Preemption.

Application of the *Andrews* prohibition upon pursuing "wrongful discharge" claims outside the RLA's mandatory grievance process would be completely consistent with numerous other decisions of the Court recognizing the broad sweep of the RLA dispute-resolution provisions. For example, in *Elgin*, the Court defined minor disputes as not only those entailed in "contracts which govern their employment relation but also in giving effect to them and to all other incidents of that relation . . . ." 325 U.S. at 733-34.

Adjustment Boards were to exercise jurisdiction where "the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective bargaining agreement, e.g., claims on account of personal injuries." *Id.* at 723. Likewise, in *Order of R. Conductors v. Southern Ry. Co.*, 339 U.S. 255, 256 (1950), where the railroad had sued in state court, and the union filed before the Adjustment Board, this Court noted that "if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by § 3, First (i) of the Railway Labor Act."

Similarly, when a former employee attempted to bypass the Adjustment Board in favor of state court action in *Pennsylvania R.R. v. Day*, 360 U.S. 548 (1959), the Court again recognized that RLA § 3, First is not limited to contract matters: "The purpose of the Act is fulfilled if the claim itself arises out of the employment relationship which Congress regulated." *Id.* at 552. The Court saw that various state court jury verdicts concerning pay disputes would undermine the role of Adjustment Boards under the RLA:

> [N]ot to respect the centralized determination of these questions through the Adjustment Board would hamper if not defeat the central purpose of the Railway Labor Act. *Id.* at 553.

Preemption of Respondent's claims in this case, moreover, would show no disrespect to the general proposition that state law should not be presumed displaced by federal law. Rather, preemption in this case is a necessary and intended consequence of the mandatory Adjustment Board mechanism created by Congress to regulate peculiarly

interstate rail and air carriers.[13] Disputes between air carriers and their employees under these RLA procedures cannot be subject to varying state laws because the "needs of the subject matter manifestly call for uniformity." *International Assn. of Machinists v. Central Airlines, Inc.*, 372 U.S. 682, 692 (1963).[14] *Accord Slocum v. Delaware L.*

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13 The very existence of the RLA as a special statute, the first of our modern labor laws, confirms the uniqueness of labor-management relations issues in the rail and air industries:

> Railroad labor historically has not been dealt with in exactly the same fashion as other types of labor in this country; and, of course, when we say railroad labor we refer also to labor that is employed by airlines . . . . Employer and employee relationships in the railroad industry often independent of State laws have been the subject of Federal legislation for many years because of the direct effect of labor disputes in that industry upon the free flow of interstate commerce. . . .

96 Cong. Rec. 17,048 (1951) (statement of Rep. Beckworth). Furthermore,

> [R]ailroads are much more engaged in interstate commerce than are telegraph or telephone companies. When we pick up the telephone in Washington to make a call to Florida it does not involve any personnel moving out of the District of Columbia and going to Florida or to any other State. . . . However, when a railroad train moves out of Washington on the way to Florida, personnel does cross State lines.

96 Cong. Rec. 16,261 (1950) (statement of Sen. Hill).

14 *See* 96 Cong. Rec. 16,373 (1950) (statement of Sen. Morse) ("Adjustment Board . . . functions on the principle of uniform application of its policies throughout the country. . . . [W]ithout preemption] Railway Labor Act will be so disrupted by great disparities in administrative policies growing out of differences in State laws that the effectiveness of the act will at an early date be greatly impaired."); Hearings before the (continued...)

& W. R. Co., 339 U.S. 239, 243 (1950) (Adjustment Board decisions "provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the nation's railway systems.")[15]

Finally, this Court has been mindful that Congress deferred to rail and air industry and labor desires in formulating the RLA to an unprecedented degree. *Chicago & N.W. R. Co. v. United Transp. Union, 402 U.S. 570, 576 (1971).*[16] Both employers and employees wanted simple and

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14(...continued)
Senate Committee on Interstate Commerce on S. 3266, 73d Cong., 2d Sess., p. 33 (1936) (George Harrison, principal labor spokesperson) (stating that the Adjustment Boards were the alternative to "a hodgepodge arrangement by law . . .")

15 Resolution by an Adjustment Board serves not only the interest of the individual claimant, but also serves all employees throughout the carrier's system. A decision in favor of the employee will be a precedent in any further retaliatory discharge grievances that may arise. The Adjustment Board is an extension of the collective bargaining process; what is done there has an impact upon all the employees in that craft throughout the system. *See Slocum*, 339 U.S. at 242 (1950) (settlement of dispute interpreting RLA labor contract "would have prospective as well as retrospective importance to both the railroad and its employees, since the interpretation accepted would govern future relations of those parties"). *See also Union P. R. Co. v. Sheehan*, 439 U.S. 89, 94 (1978), *reh'g denied*, 439 U.S. 1135 (1979) ("The effectiveness of the Adjustment Board in fulfilling its task depends on the finality of its determinations.")

16 The railroad industry was seen as a "state within a state" that evolved its own adjustment mechanisms, in which courts were to have no role:

> These [RLA controversies] were certainly not expected to be solved by ill adapted judicial interferences, escape from which was indeed one of the driving motives in establishing specialized machinery of mediation and arbitration.

(continued...)

speedy dispute-resolution processes.[17] "Employees were willing to give up their remedies outside of the statute" in favor of a workable and binding Adjustment Board remedy. *Price*, 360 U.S. at 613-614 (1959).[18] The decision below improperly repudiates the Adjustment Board framework which Congress adopted at the behest of both the affected industries and employee representatives.

16(...continued)

Elgin, 325 U.S. at 752 (Frankfurter, J. dissenting); *International Ass'n of Machinists v. Street*, 367 U.S. 740, 760 (1961) (quoting above language with approval).

17 *See, e.g.*, 67 Cong. Rec. 4650 (1926) (statement of Rep. Jacobstein) ("[K]eep lawyers out of the settling of disputes. . . . Lawyers always tried to settle things in terms of legal technicalities whereas disputes should be settled by practical men of affairs in close contact with the situation and with an understanding of the psychology of the parties involved in the dispute.")

18 Mr. Richberg, the principal spokesperson for the unions in support of the RLA of 1926, observed that at the time the RLA was adopted "I have yet to see any law which effectively prevented tyranny on the part of the employer, and unjust and arbitrary action against the employees . . ." Hearings before the House Committee on Interstate & Foreign Commerce, Railroad Labor Disputes, H.R. 7180, 69th Cong. 1st Sess. p. 92 (Jan. 28, 1926). The RLA itself was to fill this gap by providing "for the fair ironing out of all their disputes . . ." without recourse to legal procedures. *Id*. *Accord* Hearings before the Senate Committee on Interstate Commerce on S. 3266, 73d Cong. 2d Sess., 33 (April 11, 1934) (statement of George Harrison, spokesperson for the 21 standard railway labor unions) ("we are willing to take our chances with this national board because we believe, out of our experience, that the national board is the best and most efficient method of getting a determination of these many controversies . . ..")

2. Preemption Of Respondent's Claims Would Serve RLA Purposes.

The present case well illustrates the dysfunctional results of abandoning or restricting *Andrews'* preemption of wrongful discharge claims under state law. When Respondent refused to sign a work record (a task required of mechanics by Article IV, D.4a of the collective bargaining agreement), he was held out of service pending investigation (a process established by Art. XV, F.1 of the collective bargaining agreement), and the normal grievance processes were followed to determine whether he should be disciplined for violation of the work rule. Respondent defended his refusal to sign a work record attesting that he had changed a tire on the grounds that another part of the tire assembly was unsafe.

When Respondent was dissatisfied with the first step of the grievance process, he appealed to the next step. Soon thereafter, he abandoned the grievance process and filed suit in state court on common law grounds of wrongful discharge, claiming that the discipline imposed on him violated public policy. The public policy violation alleged was airline safety -- an issue specifically addressed in Art. XVII, F of the collective bargaining agreement, which said that "[a]n employee's refusal to perform work which is in violation of established health and safety rules, or any local, state or federal health and safety law shall not warrant disciplinary action." The holding below thus permits Respondent to take a dispute over his discipline or discharge before a state court jury, completely bypassing the mandatory grievance mechanism and the expertise of an arbitrator knowledgeable in industry practices regarding the interplay of public safety issues and discipline for refusal to perform work. As a result,

the RLA's carefully tailored dispute-resolution system is rendered irrelevant.[19]

The purposes of the RLA surely will be undermined if state law is not preempted for discipline and discharge matters assigned by Congress to the Adjustment Board. Under the Hawaii Supreme Court's holding, a grievant may have two proceedings in which to challenge an adverse employment decision. The prospect of inconsistent factual findings and remedies on the same evidence before an arbitrator and a state court is sure to undermine the credibility and finality of the RLA arbitration process.[20] RLA Adjustment Boards will become "backup" forums, or may delay their proceedings to avoid inconsistent results. As a result, the carriers and their unionized employees would lose the benefit of the tribunal that is "peculiarly competent" to resolve their disputes. *Order of R. Conductors v. Pitney*, 326 U.S. 561, 566 (1946). Such dual processes are inherently

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19 Conversely, comprehensive RLA preemption does not eliminate consideration by the arbitrator of any relevant public policy objectives embodied in state law. For example, an arbitrator might conclude that a discharge was impermissible because an unlawful motive, rather than just cause, was the real reason for the discharge. The arbitrator may look to state, as well as federal, law as a source of public policy concerning the meaning of "just cause" and the parties are free to incorporate state law protection expressly in the collective bargaining agreement. *See, e.g., Richmond, F. & P. R.R. v. Transportation Communications Int'l Union*, 973 F.2d 276, 279 (4th Cir. 1992) ("there is no statutory barrier to submitting [to Adjustment Board] questions involving the interpretation of statutes or case law"); *IAM v. Alaska Airlines, Inc.*, No. 88-4079 (9th Cir. Feb. 21, 1990), *cert. denied*, 498 U.S. 821 (1990) (Adjustment Board had the right to rely on external law as the basis for its award).

20 Even in the context of the more limited LMRA, there is "inherent potential for conflict when 'two separate remedies are brought to bear on the same activity.'" *Wisconsin Dept. of Industry v. Gould, Inc.*, 475 U.S. 282, 289 (1986), *quoting Garner v. Teamsters*, 346 U.S. 485, 498-499 (1953).

destructive of the mandatory arbitration scheme Congress has established.

Moreover, rail and air carriers would be subject to a multitude of varying state laws that would impede efficient interstate operations by applying different substantive standards to employees in the same bargaining unit. This diversity would be contrary to the RLA's mandate for system-wide labor relations. Instead, the parties would be subject to a "race of diligence" to obtain the forum that one party thought more desirable in any given instance. *Southern R.R.*, 339 U.S. at 256. An employee whose work touched many states would surely choose to sue in the state most favorable to him. Such multiple and potentially inconsistent dispute-resolution mechanisms would fatally disrupt the essential purpose of mandatory arbitration under the RLA -- "the prompt and orderly settlement of all disputes."[21]

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21 Keeping disputes within the RLA framework of dispute resolution enhances the value and effectiveness of the Adjustment Boards and the collective bargaining process as a whole; this process allows RLA conciliation procedures to work on a broad range of controversies and promotes industrial peace. *See Brotherhood of R. Trainmen v. Chicago R. & I. R.R.*, 353 U.S. 30, 34 (1957), *reh'g denied*, 353 U.S. 948 (1957) (rejecting the view that parties may voluntarily use Adjustment Board but may resort to economic duress, if that seems more desirable).

II. RLA PREEMPTION SHOULD NOT BE GOVERNED BY LABOR MANAGEMENT RELATIONS ACT STANDARDS.

Reiterating the rationale of the Hawaii Supreme Court, the Solicitor General, without citing or distinguishing this Court's decision in *Andrews*, suggests that "*Lingle* supplies an appropriate analogy in this case." Brief for the United States as Amicus Curiae on Petition for Certiorari at 14. As a justification for this analogy, the Solicitor General blithely dismisses the Railway Labor Act, asserting that respondent's state law wrongful discharge claims "are not minor disputes subject to the exclusive arbitral mechanism of the RLA," and that "[t]he proper framework for the existence of a minor dispute is set forth in this Court's decision in *Conrail*" *Id.* at 8. With all due respect, the Solicitor General's effort to shoehorn this case into the *Conrail* boot is misguided, and his analogy to *Lingle* is inappropriate.

The *Conrail* issue was "whether Conrail's addition of a drug screen to the urinalysis component of its required periodic and return-to-duty medical examinations gives rise to a 'major' or a 'minor' dispute under the RLA." 491 U.S. at 301. If the dispute were "major," the parties would have to go through a protracted bargaining and mediation process; if "minor," the dispute would be "subject to compulsory and binding arbitration before the National Railroad Adjustment Board." *Id.* at 303. The major/minor line explored by the *Conrail* Court was solely for the purpose of differentiating *which RLA process was applicable*, the RLA bargaining process or the Adjustment Board. The Court recognized that, whether "major" or "minor," RLA processes would control the framework for resolving that dispute.

The Solicitor General now seeks to use *Conrail* to permit employees to opt out of RLA processes altogether. By recharacterizing a dispute as not "minor," (although

admittedly not "major") the Solicitor General seeks removal of the dispute from the RLA's nationwide dispute resolution processes to state courts, from arbitrators to juries. As demonstrated above at 8-16, an employee discipline or discharge matter is the classic minor dispute, for RLA "minor disputes" sweep more broadly than LMRA "violation of contract" matters. Removal of such issues from the RLA adjustment process through creation of a new third category of uncovered disputes runs completely contrary to the RLA's plain language, contradicts the legislative history of the RLA, and disserves the policies of the statute. In short, *Conrail* is a red herring, irrelevant to disposition of this case.[22]

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22 The Solicitor General also relies heavily upon *Colorado Anti-Discrimination Comm'n v. Continental Air Lines, Inc.*, 372 U.S. 714 (1963). There the issue was whether an *applicant* rejected because of his race could assert a claim under the Colorado Anti-Discrimination Act of 1957. Not surprisingly, this Court found that this claim was not barred by the RLA, just as it would no doubt hold that the RLA would not bar suit by any other non-employee who filed a tort claim in state court against a railroad or an airline carrier. *See, e.g., Erie R.R. v. Tompkins*, 304 U.S. 64 (1938). The single paragraph of that opinion devoted to the RLA issue did not explore any of the statutory provisions, legislative history, or policy considerations briefed in this case. The Court's *dictum* that there is no indication Congress "intended to bar States from protecting employees against racial discrimination," 372 U.S. at 724, must be placed in context. The very next sentence, "No provision in the Act even mentions discrimination in *hiring*" (emphasis added), indicates that the Court was really referring to applicants, and the Court obviously did not intend the word "employee" in the preceding sentence to have the broad meaning ascribed to it by the Solicitor General.

This Court should not be misled by any suggestion that preemption of respondent's wrongful discharge claim would undermine this nation's opposition to employment discrimination. This case does not present any question of how the RLA and other federal statutes, such as Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.*, should be accommodated. Moreover, the subject of discrimination is not inappropriate for arbitration. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991). Congress has reaffirmed the appropriateness of

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With respect to *Lingle*, the Solicitor General concludes that it "addresses" a question common to both the RLA and the LMRA: "how to accommodate the federal interest in uniform interpretation of collective bargaining agreements and the legitimate interest of the States in adopting standards of conduct for employers subject to their police power." U.S. Brief at 15. This statement of the question both narrows the scope of RLA concerns and broadens the nature of the state interests -- a result that is not surprising, since the LMRA is much more deferential to state law than is the RLA.

Lingle and its predecessors *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985), and *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), dealt with the purpose behind § 301 of the LMRA,[23] which is limited to allowing courts to

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22(...continued)
alternatives means of dispute resolution in Title VII cases. Civil Rights Act of 1991, 42 U.S.C. § 1981 nt (Supp. III 1992). *See also Rodriguez de Quijas v. Shearson/American Express Inc.*, 490 U.S. 477, 481 (1989) (attacks on arbitration that "res[t] on suspicion of arbitration as a method of weakening the protections afforded in the substantive law" are "far out of step with our current strong endorsement of the federal statutes favoring this method of resolving disputes.") An arbitrator's decision which ignores clearly expressed public policy will not be judicially enforced. *See Misco*, *supra*, at 30 (arbitrator's ruling, if contrary to explicit public policy embodied in law, will not be enforced).

23 The Solicitor General also inappropriately limits his preemption analysis to one branch of LMRA preemption doctrine. RLA preemption, however, is not limited to the *Lingle/Lucas Flour* issues that arise in § 301 preemption cases, but also encompasses the type of issues present in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959) (States may not regulate activity that the NLRA protects or prohibits because of the potential conflict from having two separate remedies brought to bear on the same activity), and *International Ass'n of Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976) (NLRA pre-empts state laws that "'upset the balance of power between labor and management expressed in our national labor policy.'")

resolve "suits for violation of contracts between an employer and a labor organization." 29 U.S.C. § 185(a). Obviously, if a state law claim depends upon the meaning of a collective bargaining agreement, it must be preempted by § 301. Conversely, it is appropriate under the LMRA to limit § 301 preemption to cases where the state law claim does depend upon the meaning of the agreement, since that is the limit of the § 301 remedy.[24]

Significantly, the RLA expressly mandates that Adjustment Boards do *more* than simply resolve disputes about the interpretation and application of agreements. As noted above, they must settle "*all disputes* growing out of *grievances or* out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." The use of the disjunctive, combined with the legislative history discussed above, shows that "grievance" was not merely another term for disputes about the interpretation or application of agreements. Therefore, preemption under the RLA must occur not only where the state law claim depends upon the interpretation of a contract, but also whenever there is a grievance entrusted by Congress to the Adjustment Board.

Moreover, the RLA takes an entirely different and broader approach than the LMRA in other relevant ways:

First, Adjustment Boards were designed specifically to vindicate individual rights, not just collective rights secured by unions through bargaining. The RLA, 45 U.S.C. § 153(i) and (j), allows an individual to bring a grievance, without a union acting on his or her behalf. Indeed, a union is not

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24 Indeed, the non-RLA collective bargaining agreement involved in *Lingle* actually defined the term "grievance" in contractual terms, as disputes between the employer and employee "concerning the effect, interpretation, application, claim of breach or violation of this Agreement." 486 U.S. at 401-02.

permitted to compromise an individual's rights in an Adjustment Board proceeding. *Elgin*, 325 U.S. at 736.

Second, while LMRA arbitration exists only if created voluntarily through a collective bargaining agreement, the RLA mandates the Adjustment Boards. As this Court stated in *Andrews*, 406 U.S. at 323, "[s]ince the compulsory character of the administrative remedy provided by the RLA . . . stems not from any contractual undertaking . . . but from the Act itself, the case for insisting on resort to those remedies is if anything stronger in cases arising under that Act than it is in cases arising under § 301 of the LMRA."

Third, unlike § 301, which provides for court jurisdiction, the RLA does not allow federal or state court intervention in the interpretation of collective bargaining agreements. Instead, the RLA sends disputes about either employee grievances or the interpretation or application of agreements to the Adjustment Boards. *Pitney*, 326 U.S. at 561; *Southern R.R.*, 339 U.S. at 255.

Fourth, as Congress has recognized, the need for uniformity under the RLA is far greater than under the LMRA because of the uniquely interstate nature of these industries.[25] Representation under the RLA must be "system-wide," and there is one bargaining unit that encompasses all the states served by a carrier.[26] In contrast, representation under the LMRA is by "appropriate bargaining unit," usually confined to a single facility.

Fifth, unlike § 301, preemption must operate to bar all state actions in the nature of wrongful or retaliatory discipline or discharge, since such discipline was explicitly

25 *See* pages 17 - 18 and notes 14 - 15, *supra*.

26 *See* note 8, *supra*.

intended by Congress to be included in the "grievances" that were consigned to the Adjustment Boards.[27]

Accordingly, this Court should reject the framework suggested by the Hawaii Supreme Court and the Solicitor General for resolution of this case. It should read the statute involved, the RLA, and consider the dispute presented, an effort by respondent to bypass the Adjustment Board process. *Lingle* was decided under the LMRA, a statute which is different in its terms, its history and its purposes from the RLA.

CONCLUSION

This Court should reverse the judgment of the Supreme Court of Hawaii. Because Congress has committed all disputes between RLA employers and their employees to mandatory grievance and arbitration procedures that are intended to be the exclusive dispute-resolution mechanism, respondent may not disregard this Congressional framework by filing an action for wrongful discharge in state court.

Respectfully submitted,

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27 *See supra* at pp. 8 - 12. *See also* First Annual Report of National Mediation Board 40 (1935) (summarizing the nature of disputes adjudicated by the Adjustment Board: "[i]n 15 cases complaints of improper discipline were reviewed, demerits and suspensions being protested in 5, and requests for reinstatement after discharge in 10.")